

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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ANDREW DELEON,		:
	Plaintiff	:
-against-		:
		: <u>COMPLAINT</u>
		: <u>AND JURY DEMAND</u>
		:
		: No. *-cv-*
		:
THE CITY OF NEW YORK, and		:
CORRECTION OFFICER PHILIP HUNTER		:
And JOHN DOE # 1 and JOHN DOE # 2		:
of the NEW YORK CITY DEPARTMENT OF		:
CORRECTION		:
		:
	Defendant(s),	:
		w2
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PRELIMINARY STATEMENT

1. This is an action for monetary damages (compensatory and punitive) against THE CITY OF NEW YORK, and NEW YORK CITY DEPARTMENT OF CORRECTION OFFICER PHILIP HUNTER and JOHN DOE #1 through JOHN DOE #2 of the New York City Department of Corrections (hereinafter referred to as NYCDOC) arising out of the assault, battery and violation of civil rights of plaintiff ANDREW DELEON.

2. On or about September 25, 2013, NEW YORK CITY CORRECTION OFFICERS PHILIP HUNTER and JOHN DOE #1 and JOHN DOE #2 of the NYCDOC, and other members of the NYCDOC acting under the color of state law, intentionally and willfully subjected plaintiff to, *inter alia*, excessive force, as well as assault and battery and excessive force in violation of plaintiff's rights under the Fourth, Eighth and Fourteenth Amendments of the United States Constitution.

3. The Plaintiff, ANDREW DELEON, through his attorneys, complaining of the defendants, respectfully alleges:

JURISDICTION

4. This action is brought under 28 U.S.C. §§ 1331 and 1343, 42 U.S.C. §§ 1983, 1985 and 1988 and the Fourth, Fifth, Eighth, Fourteenth and Fifteenth Amendments to the Constitution of the United States. Pendant Jurisdiction, pendant party jurisdiction, and supplementary jurisdiction over plaintiff's state law claims is asserted.

5. The amount in controversy exceeds \$75,000.00 excluding interest and costs.

6. Venue is laid within the United States District Court for the Southern District of New York in that the claims alleged in the complaint occurred within the boundaries of the Southern District of New York, particularly Bronx County.

PARTIES

7. Plaintiff at all times relevant hereto was detained by NYCDOC and was incarcerated at Bronx County Criminal Court located at 215 East 161st Bronx, NY 10451.

8. Plaintiff at all times relevant hereto was a resident of Bronx County.

9. That at all times hereinafter mentioned, and upon information and belief, the defendant, THE CITY OF NEW YORK, was at all times relevant hereto, a municipal corporation duly organized and existing under the laws, statutes and charters of the State of New York.

10. The NYCDOC and was at all times relevant hereto, an agency of the defendant THE CITY OF NEW YORK.

11. That at all times hereinafter mentioned, and on information and belief, the defendants NEW YORK CITY CORRECTION OFFICERS PHILIP HUNTER (hereinafter "HUNTER") and JOHN DOE #1 and JOHN DOE # 2 and other members of the NYCDOC, were at all times relevant hereto, employees of the defendant CITY OF NEW YORK, as correction officers employed by the NYCDOC or police officers employed by the NYPD.

12. At all times mentioned herein, defendants were acting under color of state and local law, to wit, under color of statutes, ordinances, regulations, policies, customs and usages of the City of New York and the State of New York.

13. That at all times hereinafter mentioned, and upon information and belief, the individual defendants are named herein both personally and in their official representative capacities as correction officers employed by the defendant, THE CITY OF NEW YORK. And that each and all of the acts of the individual defendants alleged herein were done by the individual defendants and each of them under cover and pretense of the statutes and laws of the State of New York, and under and by virtue of their authority as police officers and employees of defendant, THE CITY OF NEW YORK.

14. That as a result of the foregoing, the defendant, THE CITY OF NEW YORK, is liable for the individual defendant's acts under to the doctrine of "respondeat superior."

NOTICE OF CLAIM

15. Within 90 days of the occurrence of the incident, plaintiffs filed written Notice of Claim with the City of New York. This matter has not been settled or otherwise disposed of.

FACTUAL ALLEGATIONS

16. On September 25, 2013, plaintiff was arrested and brought to Bronx County Criminal Court, Central Booking, for his arraignment on Docket No. 2013BX055638.

17. Bronx County Criminal Court is located at 215 East 161st, Bronx, NY 10451.

18. Plaintiff was arrested because he was driving with a suspended license and as a result was charged with Aggravated Unlicensed Operation of a Motor Vehicle (VTL 511 § (1) (a)) and Violations of the Vehicle and Traffic Law (VTL § 509 (1)).

19. On or about September 25, 2013, once at Central Booking, and in the custody of NYDOC, plaintiff was placed in a large cell that had many men who were in custody awaiting arraignment.

20. Plaintiff, who was recovering from a badly injured left leg that had required three different operations, asked defendant HUNTER if he could be placed in an adjacent cell that only had one other inmate.

21. HUNTER told the plaintiff that he could not be moved and plaintiff, upset that his request was denied, began to have a verbal argument with HUNTER.

22. Plaintiff sarcastically asked HUNTER what it would cost to move him to the less crowded cell.

23. HUNTER in response grabbed plaintiff, who was holding a cane, and forcefully removed plaintiff from the cell he was in and began to attack him.

24. HUNTER grabbed plaintiff's cane causing plaintiff to fall to the ground.

25. HUNTER then grabbed plaintiff's bad leg and dragged plaintiff by his bad leg to a stairwell where HUNTER now joined by JOHN DOE #1 and JOHN DOE #2 began to hit plaintiff with their fists.

26. HUNTER then proceeded to mace plaintiff about his face causing plaintiff extreme discomfort and pain. In particular plaintiff experienced an excruciating burning sensation in his eyes.

27. Plaintiff, at this point handcuffed, and without his cane was brought by HUNTER and JOHN DOE #1 and JOHN DOE #2 down a set of stairs and placed into a small cell.

28. HUNTER, JOHN DOE #1 and JOHN DOE #2 then brought plaintiff to a slop sink where they repeatedly dunked plaintiff's head under water.

29. Although plaintiff, having been tortured, screamed that he needed medical attention this request was refused by the defendants.

30. Plaintiff was placed back into the small cell for approximately four hours after which he brought back upstairs and returned to the large cell where he had been earlier.

31. On September 26, 2013, plaintiff met with a lawyer who represented plaintiff for his arraignment on the criminal case.

32. The physical attack on the plaintiff was vicious and unprovoked.

33. Plaintiff suffered emotional distress, as well as physical pain and suffering because of this assault and battery and use of excessive force by the defendants.

34. As a direct and proximate result of the acts of defendants, plaintiff suffered injuries including but not limited to, embarrassment, humiliation, emotional distress, and physical injury.

35. On September 26, 2013 plaintiff pleaded guilty to VTL 511 (1) (a).

FIRST CLAIM FOR RELIEF
(MUNICIPAL LIABILITY)

36. Paragraphs 1 through 35 are incorporated herein by reference.

37. Defendant CITY OF NEW YORK is liable for the damages suffered by the plaintiff as a result of the conduct of its employees, agents, and servants.

38. Defendant CITY OF NEW YORK knew or should have known of their employees', agents', or servants' propensity to engage in the illegal and wrongful acts detailed above.

39. Upon information and belief, defendants and their supervisors have in the past falsely arrested individuals without probable cause, and made, and allowed other fellow police officers to make false entries in official police department records to cover up and hide their wrongful conduct.

40. Defendant CITY OF NEW YORK has failed to take steps necessary to discipline, train, supervise or otherwise correct the improper, illegal conduct of the individual defendants in this and in similar cases involving misconduct.

41. Defendant CITY OF NEW YORK has damaged the plaintiff by its failure to properly supervise, train, discipline, review, remove, or correct the illegal and improper acts of its employees, agents or servants in this and in similar cases involving police misconduct.

42. Defendants subjected plaintiff to assault and battery, excessive force and a violation of his civil rights.

43. Plaintiff has been damaged as a result of the wrongful, negligent and illegal acts of the defendant CITY OF NEW YORK in the amount of Five Million (\$5,000,000.00) Dollars.

WHEREFORE, plaintiff demands judgment against the defendants, jointly and severally as follows:

A. In favor of the plaintiff in the amount of Five Million (\$5,000,000.00) Dollars;

B. Awarding plaintiff punitive damages in the amount of Five Million (\$5,000,000.00) Dollars;

C. Awarding plaintiff reasonable attorney's fees, costs and disbursements of this action; and

D. Granting such other and further relief as this Court deems just and proper.

SECOND CLAIM FOR RELIEF
(FOURTH AMENDMENT)

44. Paragraphs 1 through 43 are incorporated herein by reference.

45. Defendant HUNTER and JOHN DOE #1 and JOHN DOE #2 and other members of the NYCDOC illegally subjected plaintiff to excessive force and deprivation of liberty without probable cause.

46. That as a result of the foregoing, the plaintiff has been deprived of his following rights, privileges and immunities secured to him by the constitution and the laws of the United States: the right to be secure in his person and effects against unreasonable search and seizure under the Fourth and Fourteenth Amendments; the rights of the plaintiff not to be deprived of life, liberty or property without due process of law under the Fourth and Fourteenth Amendments; and the right to be free from a deprivation of his civil rights in violation of the statutes made and provided.

47. Plaintiff has been damaged as a result of the wrongful, negligent and illegal acts of the defendant CITY OF NEW YORK in the amount of Five Million (\$5,000,000.00) Dollars.

WHEREFORE, plaintiff demands judgment against the defendants, jointly and severally as follows:

A. In favor of the plaintiff in the amount of Five Million (\$5,000,000.00) Dollars;

B. Awarding plaintiff punitive damages in the amount of Five Million (\$5,000,000.00) Dollars;

C. Awarding plaintiff reasonable attorney's fees, costs and disbursements of this action; and

D. Granting such other and further relief as this Court deems just and proper.

FOURTH CLAIM FOR RELIEF
(FOURTEENTH AMENDMENT)

48. Paragraphs 1 through 47 are incorporated herein by reference.

49. Defendants HUNTER and JOHN DOE #1 and JOHN DOE #2 and other members of the NYCDOC illegally subjected plaintiff to excessive force and deprivation of liberty without probable cause.

50. That as a result of the foregoing, the plaintiff has been deprived of his following rights, privileges and immunities secured to him by the constitution and the laws of the United States: the right to be secure in his person and effects against unreasonable search and seizure under the Fourth and Fourteenth Amendments; the rights of the plaintiff not to be deprived of life, liberty or property without due process of law under the Fourth and Fourteenth Amendments; and the right to be free from a deprivation of his civil rights in violation of the statutes made and provided.

51. Plaintiff has been damaged as a result of the wrongful, negligent and illegal acts of the defendant CITY OF NEW YORK in the amount of Five Million (\$5,000,000.00) Dollars.

WHEREFORE, plaintiff demands judgment against the defendants, jointly and severally as follows:

A. In favor of the plaintiff in the amount of Five Million (\$5,000,000.00) Dollars;

B. Awarding plaintiff punitive damages in the amount of Five Million (\$5,000,000.00) Dollars;

C. Awarding plaintiff reasonable attorney's fees, costs and disbursements of this action; and

D. Granting such other and further relief as this Court deems just and proper.

FIFTH CLAIM FOR RELIEF
(EXCESSIVE FORCE)

52. Paragraph 1 through 51 are herein incorporated by reference.

53. Defendants HUNTER, JOHN DOE #1 and JOHN DOE #2, in beating plaintiff about his body, macing plaintiff in his face, and dunking his head under water, subjected him to excessive force.

54.. Defendants deprived plaintiff of his civil, constitutional and statutory rights and have conspired to deprive him of such rights and are liable to plaintiff under 42 U.S.C. §§ 1983 and 1985 and the New York State Constitution.

55. As a result of the excessive force used against the plaintiff, plaintiff was damaged in the sum of Five Million (\$5,000,000.00) Dollars.

WHEREFORE, plaintiff demands judgment against the defendants, jointly and severally as follows:

- A. In favor of the plaintiff in the amount of Five Million (\$5,000,000.00) Dollars:
- B. Awarding plaintiff punitive damages in the amount of Five Million (\$5,000,000.00) Dollars:
- C. Awarding plaintiff reasonable attorney's fees, costs and disbursements of this action; and
- D. Granting such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiff demands a jury trial.

Dated: New York, New York
May 5, 2016

FINK & KATZ, PLLC.

/s/ Jonathan Fink

By: Jonathan A. Fink
One of Plaintiff's Attorneys

Attorneys for Plaintiff

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